

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEREMY D. LIEBICH,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

CASE NO. 3:20-cv-05053-BHS-JRC

ORDER

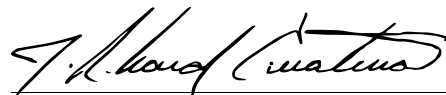
The District Court has referred this action filed under 28 U.S.C. § 2254 to United States Magistrate Judge J. Richard Creatura. On January 19, 2020, petitioner initiated this action challenging his state court convictions and sentence. *See* Dkts. 1, 3. Respondent filed his answer on March 3, 2020. Dkts. 8, 9. The Court has reviewed the petition, respondent's answer, and the state court record. *See* Dkts. 3, 8, 9.

Since respondent filed the answer, petitioner's time to file petition for collateral attack in state court passed. *See* Dkts. 8, 9. *See* RCW § 10.73.090 (no petition or motion for collateral attack may be filed more than one year after the judgment becomes final). If petitioner did not

1 file any form of collateral relief in state court on or before April 1, 2020, he would be  
2 procedurally barred from doing so, and the petition should be dismissed with prejudice. *See id.*  
3 Based on the record before the Court, it is not clear if petitioner sought collateral review in state  
4 court, between March 3, 2020, the date respondent filed his answer, or if he has procedurally  
5 defaulted on all his claims as of April 1, 2020. *See Casey v. Moore*, 386 F.3d 896, 920 (9th Cir.  
6 2004); *Eisermann v. Penarosa*, 33 F. Supp. 2d 1269, 1274 (D. Haw. 1999) (“[I]f a petitioner has  
7 never raised his federal claim to the highest state court available and is now barred from doing so  
8 by a state procedural rule, exhaustion is satisfied because no state remedy remains available, but  
9 the petitioner has procedurally defaulted on his claim.”).

10 Accordingly, the Court needs additional information to make a determination on the  
11 petition. The Court orders respondent to supplement his answer and inform the Court whether  
12 petitioner’s claims are procedurally defaulted. Respondent’s supplemental answer must be filed  
13 on or before May 22, 2020. Petitioner’s supplemental response, if any, is due June 5, 2020. The  
14 Clerk is ordered to re-note the petition for consideration on June 5, 2020

15  
16 Dated this 29th day of April, 2020.

17  
18  
19 

20 J. Richard Creatura  
21 United States Magistrate Judge  
22  
23  
24